

Amendment and Response
Appl. No. 09/923,198

REMARKS/ARGUMENT

This amendment responds to the Office Action of September 4, 2002, in accordance with 37 C.F.R. § 1.111.

Claims 16 and 33 were cancelled by the applicants in their Amendment/Submission of August 6, 2001. Claim 36 was added by the Second Preliminary Amendment of August 6, 2001.

Claims 1 through 15, 17 through 32, and 34 through 36 are pending in the application. Claims 2 through 5 are withdrawn from consideration. Claim 1 is amended.

The Examiner upholds the restriction requirement. The applicants request reconsideration for the reasons previously presented.

The Examiner objects to claim 33. Claim 33 was previously cancelled as explained above.

The Examiner objects to claims 6 through 35 as being in improper multiple-dependent form. The applicants' Amendment/Submission of August 6, 2001, removed all multiple dependent language in claims 4 through 15, 17 through 31, 34, and 35. The objection to these claims and the refusal to examine these claims are improper. The applicants request an acknowledgment and/or a new non-final Office Action reporting the receipt of the August 6, 2001, Amendment/Submission and the examination of these claims.

The Examiner rejects claim 1 as being improperly directed to a misjoinder of inventions and states that the claim would be allowable if it is amended to the elected invention. The applicants present amended claim 1 for this purpose.

The claim is amended to encompass all covered, elected species that perform similarly to the elected preferred compound 4 of Table 1 of the application. This amendment is supported by the applicants' Test Examples that demonstrate the

Amendment and Response
Appl. No. 09/923,198

biological activity of the compounds as fungicides. These compounds form the "family" of compounds encompassed by the amended claim. The applicants are entitled to the elected sub-genus claim upon a finding of patentability for the elected species.

The applicants' amendment to claim the elected sub-species is not intended to prejudice their right to claim additional compounds in subsequent continuation and/or divisional applications. This rejection should be withdrawn.

The applicants believe that the application is in condition for allowance.
Favorable consideration is requested.

Respectfully submitted,



Paul Grandinetti
Registration No. 30,754
OSTROLENK, FABER, GERB & SOFFEN, LLP
1180 Avenue of the Americas
New York, New York 10036-8403
Telephone (212) 382-0700

Amendment and Response
Appl. No. 09/923,198

APPENDIX A
"CLEAN" VERSION OF EACH PARAGRAPH/SECTION/CLAIM
37 C.F.R. § 1.121(b)(ii) AND (c)(i)

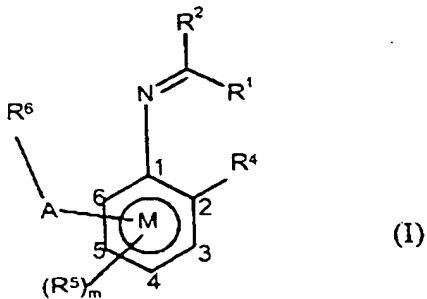
IN THE CLAIMS:

Please cancel claims 16 and 33 without prejudice.

Please enter the following amendments to claim 1:

1. (Amended) A compound of general formula I and salts thereof as fungicides

A²



wherein

- R¹ and R², which may be the same or different, are chosen from among alkyl, carbocyclyl, heterocyclyl, each of which may be substituted, and hydrogen;
- R⁴ is chosen from among alkyl, hydroxy, and halogen;
- m is 0 to 3;
- when present R⁵, which may be the same or different to any other R⁵, is any group defined for R⁴;
- R⁶ is optionally substituted carbo- or heterocyclyl; and
- A is a direct bond or -O-.

Amendment and Response
Appl. No. 09/923,198

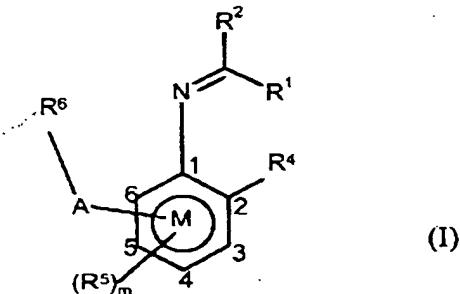
APPENDIX B
VERSION WITH MARKINGS TO SHOW CHANGES MADE
37 C.F.R. § 1.121(b)(iii) AND (c)(ii)

IN THE CLAIMS:

Please cancel claims 16 and 33 without prejudice.

Please enter the following amendments to claim 1:

1. (Amended) A compound of general formula I and salts thereof as fungicides



wherein

- R¹ and R², which may be the same or different, are chosen from among alkyl, [acyl, cyano, alkoxycarbonyl, aminocarbonyl, alkenyl, alkynyl,] carbocyclyl, heterocyclyl, each of which may be substituted, and hydrogen; [or]
- R² and R¹, together with their interconnecting atoms may form a ring, which may be substituted;]
- R⁴ is chosen from among alkyl, [alkenyl, alkynyl, carbocyclyl, heterocyclyl, each of which may be substituted; hydroxy; mercapto; azido; nitro;] hydroxy, and halogen;[cyano; acyl; optionally substituted amino; cyanato;

Amendment and Response

Appl. No. 09/923,198

thiocyanato; -SF₅; -OR^a; -SR^a and -Si(R^a)₃, where R^a is alkyl, alkenyl, alkynyl, acyl, carbocyclyl or heterocyclyl, each of which may be substituted;]

- m is 0 to 3;
- when present R⁵, which may be the same or different to any other R⁵, is any group defined for R⁴;
- R⁶ is optionally substituted carbo- or heterocyclyl; and
- A is a direct [bond, -O-,] bond or -O-[-S(O)_n-, -NR⁹-, -CR⁷=CR⁷-, -C=C-, -A¹-, -A¹-A¹-,
-O-(A¹)_k-O-, -O-(A¹)_k-, -A³-, -A⁴-, -A¹O-, -A¹S(O)_n-, -A²-, -OA²-, -NR⁹A²-,
-OA²-A¹-, -OA²-C(R⁷)=C(R⁸)-, -S(O)_nA¹-, -A¹-A⁴-,
-A¹-A⁴-C(R⁸)=N-N=CR⁸-,
-A¹-A⁴-C(R⁸)=N-X²-X³-, -A¹-A⁴-A³-, -A¹-A⁴-N(R⁹)-, -A¹-A⁴-X-CH₂-,
-A¹-A⁴-A¹-,
-A¹-A⁴-CH₂X-, -A¹-A⁴-C(R⁸)=N-X²-X³-X¹-, -A¹-X-C(R⁸)=N-,
-A¹-X-C(R⁸)=N-N=CR⁸-, -A¹-X-C(R⁸)=N-N(R⁹)-, -A¹-X-A²-X¹-,
-A¹-O-A³-, -A¹-O-C(R⁷)=C(R⁸)-, -A¹-O-N(R⁹)-A²-N(R⁹)-, -A¹-O-N(R⁹)-A²-,
-A¹-N(R⁹)-A²-N(R⁹)-, -A¹-N(R⁹)-A²-,
-A¹-N(R⁹)-N=C(R⁸)-, -A³-A¹-, -A⁴-A³-, -A²-NR⁹-, -A¹-A²-X¹-, -A¹-A¹-A²-X¹-,
-O-A²-N(R⁹)-A²-, -CR⁷=CR⁷-A²-X¹-, -C=C-A²-X¹-, -N=C(R⁸)-A²-X¹-,
-C(R⁸)=N-N=C(R⁸)-, -C(R⁸)=N-N(R⁹)-, -(CH₂)₂-O-N=C(R⁸)- ou
-X-A²-N(R⁹)-

where:

- n is 0, 1 or 2,
- k is 1 to 9,
- A¹ is -CHR⁷-,
- A² is -C(=X)-,
- A³ is -C(R⁸)=N-O-,

Amendment and Response
Appl. No. 09/923,198

- A⁴ is -O-N=C(R⁸)-,
- X is O or S,
- X¹ is O, S, NR⁹ or a direct bond,
- X² is O, NR⁹ or a direct bond,
- X³ is hydrogen, -C(=O)-, -SO₂- or a direct bond,
- R⁷, which may be the same or different to any other R⁷, is alkyl, alkenyl, alkynyl, cyano, acyl, hydroxy, alkoxy, haloalkoxy, alkythio, cycloalkyl or phenyl, each of which may be substituted; or is hydrogen or halogen;
- R⁸, which may be the same or different to any other R⁸, is alkyl, alkenyl, alkynyl, alkoxy, alkylthio, carbo- or hetero-cyclyl, each of which may be substituted; or is hydrogen;
- R⁹, which may be the same or different to any other R⁹, is optionally substituted alkyl, optionally substituted carbo- or hetero-cyclyl, hydrogen or acyl; or two R⁹ groups on A, together with the connecting atoms, form a 5 to 7 membered ring; where the moiety depicted on the right side of linkage A is attached to R⁶;
- or -A-R⁶ and R⁵ together with benzene ring M form an optionally substituted fused ring system].